

INFORMATION LETTER

Not for
Publication

NATIONAL CANNERS ASSOCIATION

For Members
Only

No. 1442

Washington, D. C.

June 20, 1953

Supreme Court Clarifies Buyer Responsibility under Robinson-Patman Act

In a decision of paramount importance, the U. S. Supreme Court on June 8, by a 6 to 3 vote, for the first time interpreted Section 2(f) of the Robinson-Patman Act, the section imposing liability on any buyer who knowingly induces or receives an unlawful discrimination in price.

In reversing a cease and desist order that had been entered against the Automatic Canteen Company of America, the Court, in a majority opinion by Mr. Justice Frankfurter, held that to establish violation on the part of a buyer the Federal Trade Commission must prove not only the inducing or receipt of a lower price than that accorded other purchasers, but must also establish that the buyer had "knowledge" that the prices received were unlawful discriminations.

"There is no substantive violation", said the Court, "if the buyer did not know that the prices it induced or received were not cost justified" or otherwise improper under the law.

The precise issue presented for determination was whether the Federal Trade Commission or the defending buyer had the burden of establishing that the lower prices received were

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Examiner Dismisses Complaint Against Florida Citrus Mutual

In an initial decision announced on June 15, the hearing examiner ordered dismissal of the complaint against Florida Citrus Mutual, a non-profit association, Lakeland, Fla., charging it with operating under a plan not within the exemption from the antitrust laws provided by the Capper-Volstead Act for growers marketing their products cooperatively.

The hearing examiner's decision is subject to review by the Federal Trade Commission and an appeal is anticipated.

The official summary of action recites that the complaint alleged that

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House Action Near on Bill Restoring FDA Factory Inspection

A new bill to provide limited authority for the Food and Drug Administration to make factory inspections was introduced in the House on June 15 by Chairman Wolverton of the House Committee on Interstate and Foreign Commerce. As soon as a Committee report is drafted, the bill will be formally reported to the House.

The text of the bill, H. R. 5740, is reproduced on page 217.

The full meaning of the bill, and particularly the degree to which it may in the future limit FDA inspection authority, will be determined in large measure by the Committee's formal report. As soon as the Committee's report becomes available, an analysis of H. R. 5740 and the report will be published in the INFORMATION LETTER.

It is understood that the Committee report will follow the recommendations of the N.C.A. and establish clearly that in reenacting Section 704 of the Food and Drug Act, Congress will not be broadening in any manner the scope of factory inspection.

USDA Seeks Expert Opinions on Improving Farm Programs

The Secretary of Agriculture on June 12 announced that he has written to representatives of major farm organizations, the land-grant colleges and experiment stations, and other agricultural groups requesting their judgments and views on what are sound principles upon which farm programs should be based.

The programs relate to such problems as price supports, commodity marketing, and foreign trade. Secretary Benson announced that the goal of the opinion survey is to provide "elements of sound, grass roots opinions which can be furnished to the Congress as it works on improving farm legislation."

The Secretary has designated six top staff members, headed by Under Secretary True D. Morse, to prepare

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Materials Controls Extended by Defense Production Act

Senate and House conferees this week completed action on a bill, S. 1081, extending authority for certain controls under the Defense Production Act. The Senate will vote Monday.

Conferees rejected the Senate-passed plan that would have enabled the President to freeze prices and wages for 90 days in event of a war or national emergency. Authorization for price and wage controls expired April 30.

The new controls bill contains an added proviso requiring that all information obtained by the Office of Price Stabilization during its existence "shall be deemed confidential and shall not be published or disclosed, either to the public or to another federal agency," except Congress and the Justice Department.

S. 1081 extends for two years—through June 30, 1955—authorization for the President to require performance under contracts or orders and to allocate materials and facilities, with a general prohibition on limiting distribution of materials among civilians.

S. 1081 also continues for two years the authority of defense agencies to guarantee loans so as to expedite production and deliveries or services under government contracts.

Small Business Administration

As a rider to the controls bill, conferees added the Small Business Act of 1953, establishing a Small Business Administration.

Under the Act, the Small Business Administration would make loans not

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FOREIGN TRADE

Leading Export Markets for Canned Fruits and Vegetables

Canned fruits and vegetables were exported in 1952 to practically every country in the world, with a number of countries accounting for sizable purchases.

The annual summary of exports for last year, issued by the Bureau of the Census, U. S. Department of Commerce, lists about 60 countries to which canned fruits and vegetables were exported in 1952.

On the basis of a computation by the N.C.A., the leading foreign market was Canada, which purchased \$21 million, or 39 percent of total canned fruit and vegetable exports valued at \$55 million.

Two other countries in the Western Hemisphere were second and third. Cuba purchased canned fruits and vegetables valued at more than \$10 million, for 19 percent of total U. S. exports, and Venezuela received canned fruits and vegetables valued at almost \$5 million for 7.6 percent of the total.

Mexico also purchased a diversity of canned fruit and vegetable products, totaling about \$1.8 million.

The value of exports of canned fruits and vegetables to selected foreign markets in the Americas, Europe, and Asia is shown in the tables at the right.

As a guide to exporters, following is a comparison of total United States trade with a number of countries that are important buyers of canned foods:

	1952	
	Exports	Imports
	(millions of dollars)	
Canada.....	2,785	2,385
American Republics, total.....	3,338	3,410
Argentina.....	147	159
Brazil.....	564	808
Central American Republics.....	254	216
Chile.....	130	286
Colombia.....	230	384
Cuba.....	816	438
Mexico.....	666	411
Peru.....	127	62
Venezuela.....	500	396
Netherlands Antilles.....	88	178
Western Europe, total.....	3,335	1,983
Belgium.....	291	191
France.....	365	167
West Germany.....	443	212
Netherlands.....	276	157
Sweden.....	123	90
Switzerland.....	151	142
United Kingdom.....	675	485
Far East, total.....	2,047	1,902
Japan.....	622	229
Philippine Republic.....	283	236
Australia-New Zealand.....	217	238

	Canada	Mex-ico	Panama	Canal Zone	Cuba	Vene-zuela	Belgium	Philip-pine R.	Japan
	(thousands of dollars)								
Canned Vegetables:									
Asparagus.....	78	181	26	7	233	193	93	151	33
Baked beans, pork and beans.....	120	8	58	31	10	12	...	197	1
Corn.....	4	38	11	16	176	31	2	8	3
Peas.....	67	44	46	14	356	245	...	140	...
Soups.....	42	108	221	87	556	391	218	60	80
Tomatoes.....	1,631	6	...	19	4	...	...	30	3
Tomato paste and puree.....	241	30	109	96	245	16	71	11	281
Tomato juice.....	1,360	10	107	22	1,004	12	30	9	21
Snap beans.....	50	51	8	20	69	41	...	10	...
Lima beans.....	...	1	1	...	2	8	...	4	...
Spinach.....	74	...	...	3	3	2	...	2	...
Vegetables and juices, n.e.c.....	230	28	48	62	162	159	...	78	7
Pickles.....	303	9	10	33	139	46	...	83	13
Catsup and chile sauce.....	381	212	49	61	1,373	324	2	372	66
Total canned vegetables.....	4,599	726	694	471	4,332	1,480	416	1,155	508

	Canada	Mex-ico	Cuba	Vene-zuela	Sweden	Nether-lands	Belgium	Philip-pine R.	Western Germany
	(thousands of dollars)								
Canned Fruits:									
Grapefruit.....	194	...	...	...	3	4	5	1	2
Berries.....	73	6	25	22	...	...	...	8	...
Apples and sauce.....	21	2	19	14	...	1	...	3	...
Apricots.....	196	2	3	24	20	35	410	3	2
Cherries.....	24	3	6	24	...	...	2	26	...
Prunes and plums.....	16	1	7	6	...	...	1	5	...
Peaches.....	529	17	984	174	119	70	505	64	19
Pears.....	83	6	635	43	13	12	40	10	...
Pineapples.....	2,673	4	...	22	509	378	978	...	334
Fruit cocktail.....	4,400	11	792	350	168	57	566	129	3
Fruits, n. e. c.....	51	2	11	12	8	...	...	6	...
Jellies and jams.....	61	23	58	23	4	...	...	37	...
Total canned fruits.....	8,240	77	2,540	714	844	557	2,507	292	360

	Canada	Mex-ico	Cuba	Vene-zuela	Sweden	Nether-lands	Belgium	Western Germany
	(thousands of dollars)							
Fruit Juices:								
Pineapple juice.....	1,055	39	...	38	30	33	69	8
Grapefruit juice, single-strength.....	1,548	12	2	7	29	35	37	68
Grapefruit juice, conc. (hot-pack).....	8	2	...	...	13	2	...	...
Orange juice, single-strength.....	2,937	21	1	87	99	81	19	109
Orange juice, conc. (hot-pack).....	109	9	...	68	...	133	25	...
Citrus juices, blended.....	1,809	4	...	14	...	7	2	16
Peach juice and nectar.....	4	114	622	274	...	...	...	...
Pear juice, nectar, and pearade.....	17	94	2,389	1,274	...	...	...	...
Fruit juices, n. e. c.....	874	471	194	682	...	7	1	...
Total fruit juices.....	8,451	956	3,276	2,491	304	190	128	201

	Canada	Mexico	Panama	Canal Zone	Cuba	Vene-zuela	Philip-pine R.	Japan
	(thousands of dollars)							
Baby foods:								
Meats.....	60	1	2	4	59	9	6	1
Vegetables.....	...	13	8	26	93	61	8	1
Fruits.....	...	8	5	16	801	495	8	...
Custards and puddings.....	...	1	6	3	6	9	3	...
Total baby foods.....	60	23	21	49	1,039	574	25	2

Shipments to U. S. Territories and Possessions in 1952

Shipments of canned fruits and vegetables to U. S. territories and possessions in 1952 were valued at \$8.6 million, on the basis of an annual statistical summary recently issued by the Bureau of the Census, U. S. Department of Commerce.

Shipments to the territories, paid for in dollars, are classified separately from exports to foreign countries.

The "shipments" are reported by the Bureau of the Census in FT 800.

Together, the 1952 exports and shipments of canned fruits and vegetables to markets outside the continental United States amounted to \$63 million (see INFORMATION LETTER of June 13, page 208).

The statistical summary lists the volume and value of shipments of

canned soups, tomato paste and puree, tomato juice, all other canned vegetables, all canned fruits, and all fruit juices.

The principal market among the territories was Puerto Rico, which purchased 94 percent of the total value of shipments.

Following are total commercial shipments of canned fruits and vegetables to the U. S. territories and possessions in 1952 by volume and value:

Item	Volume (pounds)	Value (dollars)
Canned soups.....	11,811,791	1,368,619
Tomato paste & puree..	1,701,310	175,392
Tomato juice.....	14,700,782	1,227,789
Vegs. & juices, n.e.c.....	17,040,309	1,689,605
Total canned vegs.....	45,254,192	4,461,405
Total canned fruits.....	6,364,519	870,721
Total pounds.....	51,618,711	
	(gallons)	(dollars)
Total fruit juices.....	42,205,175	3,334,225
Total dollars.....		8,606,351

The territories and possessions included in these statistics are Puerto Rico, Virgin Islands, Guam, Wake Island, American Samoa, and Canton Island.

PROCUREMENT

Canned Beef for USDA

The U. S. Department of Agriculture on June 12 announced an offer to buy substantial quantities of canned beef and gravy with Section 32 funds for distribution through the National School Lunch Program and other outlets.

First offers to sell canned beef and gravy should be made to USDA by June 22 for acceptance by USDA not later than June 26. USDA will continue to receive offers each Monday for acceptance not later than Friday until the program is completed. The product should be packed in 1 pound 14 ounce cans and may be made from U. S. Utility, Canner, or Cutter grade dressed beef carcasses. Carcasses must come from animals produced in the United States. Bids should indicate quantities of the canned beef and gravy that will be delivered each week. Deliveries should start with the week of August 17.

Detailed information concerning this program may be obtained from the Livestock Branch, Production and Marketing Administration, USDA, Washington 25, D. C.

CONGRESS

Text of Proposed Amendment to Factory Inspection Provisions of Federal Food, Drug, and Cosmetic Act

Following is the text of the proposed amendment, H. R. 5740, to the factory inspection provisions of the Federal Food, Drug, and Cosmetic Act as introduced in the House June 15 by Chairman Wolverton of the House Committee on Interstate and Foreign Commerce:

The material in italics identifies the changes and additions to present law proposed by the Committee. The material within brackets would be deleted.

A BILL

To amend the Federal Food, Drug, and Cosmetic Act, so as to protect the public health and welfare by providing certain authority for factory inspection, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 704 of the Federal Food, Drug, and Cosmetic Act, as amended (21 U. S. C., sec. 374) is amended to read as follows:

"FACTORY INSPECTION

"SEC. 704. (a) For purposes of enforcement of this Act, officers or employees duly designated by the Secretary, upon presenting appropriate credentials and a written notice to [after first making request and obtaining permission of] the owner, operator, or agent in charge [or custodian thereof], are authorized (1) to enter, at reasonable times, any factory, warehouse, or establishment in which food, drugs, devices, or cosmetics are manufactured, processed, packed, or held, for introduction into interstate commerce or are held after such introduction, or to enter any vehicle being used to transport or hold such food, drugs, devices, or cosmetics in interstate commerce; and (2) to inspect, at reasonable times and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling therein. *A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness.*

"(b) Upon completion of any such inspection of a factory, warehouse, or other establishment, and prior to

leaving the premises, the officer or employee making the inspection shall give to the owner, operator, or agent in charge a report in writing setting forth any conditions or practices observed by him which, in his judgment, indicate that any food, drug, device, or cosmetic in such establishment (1) consists in whole or in part of any filthy, putrid, or decomposed substance, or (2) has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health. A copy of such report shall be sent promptly to the Secretary.

"(c) If the officer or employee making any such inspection of a factory, warehouse, or other establishment has obtained any sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained.

"(d) Whenever in the course of any such inspection of a factory or other establishment where food is manufactured, processed, or packed, the officer or employee making the inspection obtains a sample of any such food, and an analysis is made of such sample for the purpose of ascertaining whether such food consists in whole or in part of any filthy, putrid, or decomposed substance, or is otherwise unfit for food, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge."

SEC. 2. Section 301 of such Act (prohibited acts) (21 U. S. C., sec. 331) is amended by adding at the end thereof the following new paragraph:

"(n) The using, in labeling, advertising or other sales promotion of any reference to any report or analysis furnished in compliance with section 704."

SEC. 3. Section 304 (c) of such Act (21 U. S. C., sec. 334) is amended to read as follows:

"(c) The court at any time after seizure up to a reasonable time before trial shall by order allow any party to a condemnation proceeding, his attorney or agent, to obtain a representative sample of the article seized and [as regards fresh fruits and vegetables] a true copy of the analysis, if any, on which the proceeding is based and the identifying marks or numbers, if any, of the packages from which the samples analyzed were obtained."

1953 Cannery Directory

Correction

The following information should be added or inserted on page 15 of the 1953 *Cannery Directory*:

TEXAS CANNERS ASSOCIATION

Executive Secretary: J. Overby Smith, P. O. Box 447, Weslaco, Texas.
President: Larry W. Fritz, St. Clair Foods Co., Ltd., McAllen, Texas.
Vice-President: Harold L. Akin, Akin Products Co., Mission, Texas.
Treasurer: C. M. Sherrill, Knapp-Sherrill Co., Donna, Texas.

Buyer Responsibility

(Concluded from page 215)

unlawful discriminations because they were not justified by savings in the cost of manufacture, sale or delivery. The Commission had taken the position that all it had to prove was the knowing receipt by a buyer of prices lower than those quoted by the seller to a competitor. Commission counsel insisted that it was then up to the buyer to prove that the discriminations were justified by cost savings. The buyer insisted that this imposed upon him an impossible, indeed an unconstitutional, burden. In its opinion, the majority said that Section 2(f) made it unlawful "only to induce or receive prices known to be prohibited discriminations."

The Court refused to read the language as "putting the buyer at his peril whenever he engages in price bargaining." Recognizing that the language of the law was ambiguous, the Court determined that the ordinary rules of evidence were to apply. The Court said:

"It would not give fair effect [to the statute as a whole] to say that the burden of coming forward with evidence as to costs and the buyer's knowledge thereof shifts to the buyer as soon as it is shown that the buyer knew the prices differed. Certainly the Commission with its broad power of investigation and subpoena, prior to the filing of a complaint, is on a better footing to obtain this information than the buyer. Indeed, . . . the Commission may in many instances find it not inconvenient to join the offending seller in the proceedings."

By way of caution, however, the Supreme Court pointed out that its ruling did not give complete immunity to any buyer. Congress, it said, intended to reach buyers

"who, knowing full well that there was little likelihood of a defense for

the seller, nevertheless proceeded to exert pressure for lower prices. Enforcement of the provisions of §2(f) against such a buyer should not be difficult. Proof of a cost justification being what it is, too often no one can ascertain whether a price is cost-justified. But trade experience in a particular situation can afford a sufficient degree of knowledge to provide a basis for prosecution. By way of example, a buyer who knows that he buys in the same quantities as his competitor and is served by the seller in the same manner or with the same amount of exertion as the other buyer can fairly be charged with notice that a substantial price differential cannot be justified. The Commission need only to show, to establish its prima facie case, that the buyer knew that the methods by which he was served and quantities in which he purchased were the same as in the case of his competitor. If the methods or quantities differ, the Commission must only show that such differences could not give rise to sufficient savings in the cost of manufacture, sale or delivery to justify the price differential, and that the buyer, knowing these were the only differences, should have known that they could not give rise to sufficient cost savings. The showing of knowledge, of course, will depend to some extent on the size of the discrepancy between cost differential and price differential, so that the two questions are not isolated. A showing that the cost differences are very small compared with the price differential and could not reasonably have been thought to justify the price difference should be sufficient.

"What other circumstances can be shown to indicate knowledge on the buyer's part that the prices cannot be justified we need not now attempt to illustrate; but surely it will not be an undue administrative burden to explain why other proof may be sufficient to justify shifting the burden of introducing evidence that the buyer is or is not an unsuspecting recipient of prohibited discriminations."

The *Canteen* opinion discloses a new and more realistic approach to business questions than has been evidenced in other court opinions under the Act. For example, in discussing the situation where a seller tells a buyer that the price he is demanding would be unlawful, the Court noted that this "might in some situations be puffing rather than stating anything which a buyer can rely on or should be charged with." On the other side of the coin, the Court recognized that a large buyer might secure assurances from a seller that were unrealistic. The Court suggested that

"In some circumstances [the Commission may] wish to refuse to accept

a buyer's claim that he relied on an affidavit or other assurances from the seller that price differentials were cost-justified; the furnishing of such an assurance might, together with other circumstances, indicate a sufficient absence of arm's-length bargaining to raise serious doubts as to the weight the assurance should be given in support of a buyer's claim."

In short, knowledge is made dependent upon what a businessman acting in good faith in the context of the particular business realistically and reasonably can believe.

Mr. Justice Douglas, with whom Justices Black and Reed concurred, dissented on the ground that the law should be interpreted to put the same bans and burdens on a knowing buyer as they do on the seller, and that proof that the buyer knew he was receiving a lower price should be sufficient to require him to establish that the seller was justified in granting it. The minority thought that the record in the particular case indicated knowledge on the part of the buyer that the prices induced were in fact illegal.

This first interpretation of the extent of the buyer's responsibility under the Robinson-Patman Act may have far-reaching effect. The realistic approach of the Supreme Court would appear to make it clear that a buyer who, acting in good faith, and as a reasonable businessman in his own trade, does not know that a seller is unlawfully discriminating, cannot be charged with violating the law merely by getting a price which he merely knows is lower than the seller is giving to another customer. The fashion in which the Federal Trade Commission administratively will apply the rules laid down by the Court will undoubtedly provide further guidance to American businessmen.

The interpretation of Section 2(f) announced by the Supreme Court likewise appears to be analogous to the good faith knowledge rule suggested to resolve the existing confusion about the right to meet competition. In a recent address to the N.C.A. Board of Directors, it was suggested that the law ought to provide clearly

"That a man may meet competition if he acts in good faith on what he reasonably ought to know as an alert businessman" (see Supplement to INFORMATION LETTER of May 30, page 17).

This is substantially the rule now offered by the Supreme Court in measuring when a buyer will be charged with knowledge that any lower price he receives is an unlawful price discrimination.

Invitations for Bids

QM Market Center System, 1810 West Pershing Road, Chicago 9, Ill.
Veterans Administration—Procurement Division, Veterans Administration, Wash. 25, D. C.

The Walsh-Healey Public Contracts Act may apply to all operations performed after the date of notice of award if the total value of a contract is \$10,000 or over.

The Veterans Administration has invited sealed bids to furnish the following:

PEAS—5,500 dozen No. 10 cans of sweet (or sugar) peas, size 1 to 4 inclusive or a combination thereof, Grade B, 1953 pack, or equivalent in No. 2½ or No. 2 cans. Bids due under S-4 by July 7.

PEA PUREE—12,500 dozen No. 2 cans, 1953 pack. Bids due under S-3 by July 6.

PUBLICITY

Articles by N.C.A. Presidents

Comments by President Louis Ratzesberger, Jr., and Past President Fred C. Heinz are featured in the Annual Review Number of *Southern Food Processor* (May 31, 1953). The magazine carries a special feature entitled "What They Say," giving views of various industry leaders regarding immediate and long-range prospects of the food processor; his major problems and what he must do to ensure a higher level of sales and profits.

Mr. Ratzesberger's contribution to the symposium stresses the economic and other advantages of canned foods and the benefits they bring to consumer, farmer and labor. Mr. Heinz sketches the production gains and increased per capita consumption of canned foods in recent years.

Defense Production Act

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to exceed \$100,000 to any small business concern, which is defined as "one which is independently owned and operated and which is not dominant in its field of operation."

The SBA would have a revolving fund of \$250 million, of which no more than \$150 million would be outstanding in such loans.

The SBA also would contract with other government agencies and subcontract with "small business concerns" for the manufacture, supply, or assembly of government requirements. The agency also would provide

technical and managerial aids to small business.

The SBA would replace both the Reconstruction Finance Corporation and the Small Defense Plants Administration.

Improving Farm Programs

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a preliminary digest of the reports for presentation to the National Agricultural Advisory Committee at a meeting called for June 29.

The National Agricultural Advisory Committee was appointed by President Eisenhower last December. The next meeting will be its third. Members of the committee are:

Dr. W. I. Myers, Dean, Cornell University Agricultural College, Ithaca, N. Y., chairman; D. W. Brooks, Georgia Cotton Producers Association, Atlanta; Harry B. Caldwell, North Carolina State Grange, Greensboro; Dr. Harry J. Reed, College of Agriculture, Purdue University, Lafayette, Ind.; Robert R. Coker, Hartsville, S. C.; Homer Davison, American Meat Institute, Chicago; Carl Farrington, Archer-Daniels-Midland Co., Minneapolis; Marvin McLain, Brooklyn, Iowa; Chris Millus, Nebraska Farmers Union, Omaha; Albert Mitchell, Tesquesquite Ranch, Albert, N. M.; Delmot L. Chapman, Newport, Mich.; Milo Swanton, Wisconsin Council of Agriculture, Madison; Jesse W. Tapp, Bank of America, San Francisco; and Bert Wood, Agricultural Economics Dept., Oregon State College, Corvallis.

STATISTICS

1952 Pack of Sweet Potatoes

The 1952 pack of canned sweet potatoes amounted to 4,167,055 actual cases as compared with 2,644,472 cases packed in 1951, according to a report by the N.C.A. Division of Statistics.

1952 Pack of Sweet Potatoes by States

	1951 (actual cases)	1952 (actual cases)
Md., Va., and N. J.	1,506,281	2,040,695
La., Miss., and Ala.	896,715	1,439,230
Other states	241,476	687,130
U. S. Total	2,644,472	4,167,055

1952 Pack of Sweet Potatoes by Size of Container and Style of Pack

	Solid Style	Syrup Style	Vacuum Style
(actual cases)			
No. 2	982	728,630	12,798
8 oz.		198,887	11,462
No. 303		259,181	
No. 2½	14,381	1,164,003	
No. 10	52,642	443,580	
No. 3 Vac. (squat)		658,004	549,873
Miscellaneous	150	72,473	
U. S. Total, 1952 ..	68,155	3,524,707	574,133
U. S. Total, 1951 ..	290,503	1,892,840	461,129

1952 Pack of White Potatoes

The 1952 pack of canned white potatoes amounted to 2,718,803 actual cases as compared with 1,268,078 cases packed in 1951, according to a report by the N.C.A. Division of Statistics.

	East (actual cases)	West
24/2	793,230	316,854
48/52	104,363	6,757
24/303	118,828	1,066,562
24/2½		
6/10	184,654	79,397
Misc. tin and glass	39,462	8,096
U. S. Total	1,240,537	1,478,266

East includes Ala., Del., Fla., Ga., La., Me., Md., Miss., N. J., N. Y., and Va. West includes Ark., Calif., Ind., Minn., Nebr., Okla., Texas, Utah, and Wis.

Stocks of Apple Products

Reports on canners' stocks and shipments of canned apples and apple sauce have been compiled by the N.C.A. Division of Statistics.

Canned Apple Stocks and Shipments

	1951-52	1952-53	Percent change from 1951-52
(basis 6/10)			
Carryover, Aug. 1 ..	1,953,263	1,279,639	-34
Pack, July-May ..	3,388,249	2,560,319	-24
Supply	5,341,512	3,839,958	-28
Stocks, June 1 ..	1,863,359	523,053	-72
Shipments during May	229,447	275,149	+20
Shipments, Aug. 1 to June 1	3,478,153	3,316,905	-5

Apple Sauce Stocks and Shipments

	1951-52	1952-53	Percent change from 1951-52
(actual cases)			
Carryover, Aug. 1 ..	3,497,089	1,474,654	-58
Pack, July-May ..	9,380,851	9,291,512	-1
Supply	12,877,940	10,766,166	-16
Stocks, June 1 ..	3,379,384	1,222,446	-64
Shipments during May	920,075	639,386	-31
Shipments, Aug. 1 to June 1	9,498,556	9,543,720	...

MEETINGS

N.C.A. Staff Members Speak

Executive Secretary Carlos Campbell was a principal speaker this week at the summer meeting of the Maine Canners Association, and R. B. Heiney, Assistant to the Secretary, addressed the spring meeting of the Michigan Canners Association. Both spoke on the relationship of the canning industry to the federal government.

PERSONNEL

Clyde Kraut Co. Reorganizes

W. W. Wilder, former president, has sold his entire interest in The Clyde Kraut Company, Clyde, Ohio, and the company has been reorganized with the following officers:

Chairman of the board—William M. Richards, who is president of The Title Guarantee and Trust Company, Toledo, and operator of the Catawba Cliffs Beach Club; president and general manager—Lewis E. White, who has been serving as vice president and general manager the past two years; vice president—Dermont E. Fuller, a retired banker who has been associated with the company since 1910; and secretary-treasurer—Mrs. Imelda R. Curry, who has been with the firm 20 years, has served as secretary since 1945, and is in charge of the office.

Florida Citrus Mutual

(Concluded from page 215)

pursuant to the plan under which the Florida Citrus Mutual operates, it does not handle, buy or sell citrus fruits or citrus products, but (1) attempts to control the purchase and sale of citrus fruits and products and (2) regulates the prices at which these products are purchased and sold through contract arrangements with processors and handlers.

The hearing examiner held that reliable, probative and substantial evidence was not produced that would support a finding (1) that such acts and practices as charged existed, particularly since May, 1952, and (2) therefore the conclusion must be reached that the violations charged in the complaint have not been in existence since the adoption of the new program by the organization prior to the issuance of the complaint.

"As to the acts and practices prior to May, 1952, the respondents admit the establishment of floor pricing, the proration of fresh fruit shipments, and the effort for a time to enforce these by mandatory action," the hearing examiner said. "For the purposes of this decision such admissions will be construed as admissions of violation of the Federal Trade Commission Act. It is unnecessary here, in view of the foregoing admissions, to make a determination as to whether the acts and practices of respondents

prior to May, 1952, constituted a violation of the Act.

"The record shows that none of the attempts at price regulations had any perceptible effect upon consumer costs or upon the market in general," the hearing examiner continued. "Since May, 1952, the symptoms concomitant to monopolistic controls and restraint of trade have not been apparent and the reliable, probative and substantial evidence in the record does not establish that there have been violations of the Federal Trade Commission Act by the respondents since that time."

Counsel in support of the complaint contend that the contrary is true, and refer particularly to clauses in the so-called handler contracts, but the contention is unsupported, the examiner said.

These contracts, dating from 1949 or later, are for 10-year terms but subject to cancellations, he declared. By reason of such contractual provisions, Mutual has the power and has been and is in a position to issue rules and regulations controlling its contract handlers in respects which would affect interstate commerce and which would be violative of the Federal Trade Commission Act.

"The mere existence of power, however," the hearing examiner declared, "is not something against which the Federal Trade Commission proceeds,

and the contracts go no further than to give Mutual a power which has not been exercised, so far as the record discloses at least since May, 1952. It is unnecessary, under the assumptions herein adopted, to make a determination as to whether it was exercised prior to May, 1952.

"The contracts do not themselves set prices or prescribe allotments or shipments. Since May, 1952, there have been and are no Mutual rules or regulations which would establish a per se violation of the Federal Trade Commission Act or the Antimonopoly Acts, and no acts or practices which can be found to constitute a violation, in fact. Hence, as to that period, no justification for Federal Trade Commission action remains.

"It is agreed that even if Mutual had ceased all illegal practices since May, 1952, that in itself does not require a dismissal of the complaint at this time. However, if the acts and practices have stopped and if the Commission has reason to believe that they will not be resumed, it may, in the public interest, dismiss the complaint without prejudice.

"The record shows that the acts and practices questioned were abandoned not because of Federal Trade Commission investigation but because of their economic futility, and that the abandonment was after thorough consideration and in good faith."

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